

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

FERREE

Serial No.: 09/638,241

Filed: August 14, 2000

For: METHODS AND APPARATUS FOR
TREATING DISC HERNIATION AND
PREVENTING THE EXTRUSION OF
INTERBODY BONE GRAFT



Group Art Unit: 3731

Examiner: Uyen T. Ho

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with 37 CFR §§ 1.97 and 1.98, the items identified in this Information Disclosure Statement ("IDS") are brought to the attention of the Office. The items are listed on the attached form PTO-SB/08. Also attached is a copy of an International Search Report, Supplementary Partial European Search Report and Notice of Opposition to a European Patent for a related application and patent.

The items identified in this IDS may or may not be "material" pursuant to 37 CFR § 1.56. The submission thereof by Applicant is not to be construed as an admission that any such patent, publication or other information referred to therein is material or considered to be material (37 CFR § 1.97(h)), or even qualifies as "prior art" under 35 USC § 102 with respect to this invention unless specifically designated by Applicant as such.

With reference to the attached form PTO-SB/08, Cite Nos. 4, 7, 10-14, 16, 19, 20-22, 26-28, 30, 34-38, and 41 were identified in the Notice of Opposition to European Patent No. 1,180,978,

CERTIFICATE OF MAILING (37 C.F.R. §1.8)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as First Class mail in an envelope addressed to the Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450.

January 3, 2007
Date of Deposit
NB1:699392.1

Cynthia B. Pacheco
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which is a related patent to the subject application. Cite Nos. 11 and 19 were identified in form(s) PTO-892 for related application USSN 09/807,820, filed April 19, 2001. Cite Nos. 20 and 21 were identified in form(s) PTO-892 for related application USSN 10/630,445, filed July 30, 2003. Cite No. 25 was identified in form PTO-SB/08 or PTO-1449 for related application USSN 09/807,820, filed April 19, 2001. Cite Nos. 1-3, 5-6, 8-9, 15, 17-18, 23-24, 29, 31-33, and 39 were identified in form(s) PTO-SB/08 or PTO-1449 for related application USSN 10/630,445, filed July 30, 2003. Additional materials can be found in related applications USSN 09/807,820, filed April 19, 2001, and USSN 10/630,445, filed July 30, 2003, and can be provided at the Examiner's request.

INFORMATION DISCLOSURE STATEMENT FILING PROVISION:

☒ This IDS is believed to be timely in that it is being submitted under 37 CFR § 1.97(b), that is (1) within three months of the filing date of the application, which is not a continued prosecution application filed under § 1.53(d); or (2) within three months of entry of the national stage as set forth in 37 CFR § 1.491; or (3) before the mailing of a first Office action on the merits; or (4) before the mailing of a first Office action after filing a request for continued examination under § 1.114. Thus, no fee is required.

☒ However, if the undersigned is in error in this regard, Applicant respectfully requests that the Office consider this IDS as filed under 37 CFR § 1.97(c), if applicable, and charge the fee due under 37 CFR § 1.17(p) to the deposit account referenced below.

☐ However, if the undersigned is in error in this regard, Applicant respectfully requests that the Office consider this IDS as filed under 37 CFR § 1.97(c), if applicable, and a statement under 37 CFR § 1.97(e) is included below, thus no fee is required.

☐ This IDS is being submitted under 37 CFR § 1.97(c), that is after mailing of a first Office action on the merits, but before a Final Action under 37 CFR § 1.113 or a Notice of Allowance under 37 CFR § 1.311.

☐ The fee due under 37 CFR § 1.17(p) is submitted herewith.

☐ A statement under 37 CFR § 1.97(e) is included below, thus no fee is required. In the event that this IDS is not received before a Final Action or a Notice of Allowance, then Applicant respectfully requests that the Office consider the filing of these papers to be submitted under 37 CFR § 1.97(d) and charge the fee due under 37 CFR § 1.17(p) to the deposit account below.

☐ This IDS is being submitted under 37 CFR § 1.97(d), that is after a Final Action under 37 CFR § 1.113 or a Notice of Allowance under 37 CFR § 1.311, but before payment of the issue fee. A statement under 37 CFR § 1.97(e) is included below. The fee due under 37 CFR § 1.17(p) is submitted herewith.

Statement Under 37 CFR § 1.97(e):

- ☐ Each item contained in this IDS was first cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this IDS.
- ☐ No item contained in this IDS was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing this statement after making reasonable inquiry, no item of information contained in this IDS was known to any individual designated in 37 CFR § 1.56(c) more than three months prior to the filing of this IDS.

Two references are in a language other than the English language. A concise explanation of relevance is given below.

FR2639823

Replacement of the nucleus of the intervertebral disc by a polyurethane polymerised in situ

The invention consists of a method, a device and a product permitting replacement of the nucleus of the intervertebral disc after enucleation of the latter. The method consists in polymerising, in the cavity 4, a mixture 7 resulting in the formation of a polymer. The device consists of a bag 1 attached to a tube 2. The mixture 7, injected into the bag 1, reacts to form a polyurethane. A device 3 permits closure of the bag 1. The device permits restoration of the functions of the intervertebral articulation.

Nucléoplastie Inter-Somatique Par Voie Postérieure Per-Dissectomie: Concept et Étude Expérimentale. J.L. Husson et al., Restabilisation Inter-Somatique Du Rachis Lominaire, Sauramps Medical, 1996 pp. 311-320 [and English translation]

[English translation of title] INTER-SOMATIC NUCLEOPLASTY BY POSTERIOR PATH DURING DISCECTOMY : CONCEPT AND EXPERIMENTAL STUDY

PAYMENT AND/OR AUTHORIZATION TO CHARGE FEES:

- ☐ A check in the amount of \$_____ is enclosed for the above fee(s).
☐ Please charge _____ to Deposit Account No. **50-2862** for the above fee(s).

The Commissioner is authorized to charge any fees required by the filing of these papers, and to credit any overpayment to O'Melveny and Myers' Deposit Account No. **50-2862**.

Respectfully submitted,

O'MELVENY & MYERS LLP

Dated: January 3, 2007

By: John Kappos
John Kappos
Reg. No. 37,861
Attorneys for Applicant

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Substitute for form 1449A-PTO INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Use as many sheets as necessary)				Complete if Known	
				Application No.	09/638,241
				Filing Date	August 14, 2000
				First Named Inventor	Ferree
				Art Unit	3731
				Examiner Name	Uyen T. Ho
Sheet	1	of	2	Attorney Docket No.	026,314-018

U.S. PATENT DOCUMENTS					
Examiner Initials	Cite No. ¹	Document No.	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number-Kind Code ² (if known)			
	1.	US-3,867,728	02/1975	Stubstad	
	2.	US-3,875,595	04/1975	Froning	
	3.	US-4,349,921	09/1982	Kuntz	
	4.	US-4,665,906	05/1987	Jervis	
	5.	US-4,744,364	05/1988	Kensey	
	6.	US-5,053,046	10/1991	Janese	
	7.	US-5,116,357	05/1992	Eberbach	
	8.	US-5,171,280	12/1992	Baumgartner	
	9.	US-5,356,432	10/1994	Rutkow	
	10.	US-5,534,028	07/1996	Bao	
	11.	US-5,571,189	11/1996	Kuslich	
	12.	US-5,690,674	11/1997	Diaz	
	13.	US-5,702,454	12/1997	Baumgartner	
	14.	US-5,746,765	05/1998	Rabkin	
	15.	US-5,772,661	06/1998	Michelson	
	16.	US-5,846,261	12/1998	Kotula	
	17.	US-5,919,235	07/1999	Husson	
	18.	US-5,980,504	11/1999	Sharkey	
	19.	US-6,007,570	12/1999	Sharkey	
	20.	US-6,180,848	01/2001	Flament	
	21.	US-6,224,630	5/2001	Bao	
	22.	US-6,245,107	06/2001	Ferree	
	23.	US-6,371,990	04/2002	Ferree	
	24.	US-6,402,750	06/2002	Atkinson	
	25.	US-6,508,839	01/2003	Lambrecht	

Examiner Signature	Date Considered
<p>*Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. 1 Applicant's unique citation designation number (optional). 2 See Kinds Codes of USPTO Patent Documents at www.uspto.gov or MPEP 901.04. 3 Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). 4 For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. 5 Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. 6 Applicant is to place a check mark here if English language Translation is attached.</p> <p>This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.</p>	
NB1:697295.2	
PTO/SB-08a (08 03)	
American LegalNet Inc. www.USCourtForms.com	

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Examiner Initials*	Cite No. ¹	Foreign Patent Document		Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T ⁶
		Country Code ³	Number ⁴ Kind Code (if known)				
	26.	EP	0700671	03/1996			
	27.	EP	1180978	05/2005			
	28.	FR	2639823	06/1990			
	29.	WO	00/62832	10/2000			
	30.	WO	01/10316	02/2001			
	31.	WO	01/21246	03/2001			
	32.	WO	01/28464	04/2001			
	33.	WO	01/45577	06/2001			
	34.	WO	95/31946	11/1995			
	35.	WO	95/34331	12/1995			
	36.	WO	98/20939	05/1998			
	37.	WO	99/02108	01/1999			
	38.	WO	99/61840	12/1999			
	39.	WO	99/62439	12/1999			

NON PATENT LITERATURE DOCUMENTS			
Examiner Initials*	Cite No. ¹	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s) volume-issue number(s), publisher, city and/or country where published	T ²
	40.	Cathen, Joseph, C., M.D., "Microsurgical Annular Reconstruction (Annuloplasty) Following Lumbar Microdiscectomy: Preliminary Report of a New Technique," Abstract for Poster Presentation, AANS/CNS Section on Disorders Of The Spine And Peripheral Nerves Annual Meeting, 1999	
	41.	Nucléoplastie Inter-Somatique Par Voie Postérieure Per-Dissectomie: Concept et Étude Expérimentale. J.L. Husson et al., Restabilisation Inter-Somatique Du Rachis Lombar, Sauramps Medical, 1996 pp. 311-320 [and English translation]	

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<p>*Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. 1 Applicant's unique citation designation number (optional). 2 See Kinds Codes of USPTO Patent Documents at www.uspto.gov or MPEP 901.04. 3 Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). 4 For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. 5 Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. 6 Applicant is to place a check mark here if English language Translation is attached.</p> <p>This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.</p>	
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